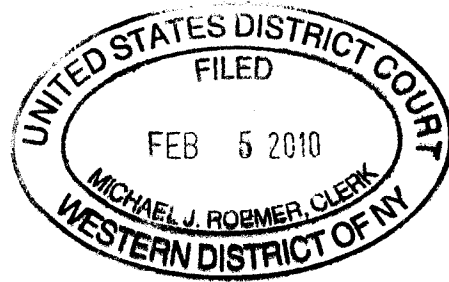


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DISABLED PATRIOTS OF AMERICA, INC., a
Florida Non Profit Corporation, and MARCUS
INGRAM, Individually,

Plaintiffs,

Civil Case No.: 1:07-cv-00299-JTC

v.

NF HOTEL, LLC, a New York Limited Liability
Company,

Defendant.

MODIFIED CONSENT DECREE

This Modified Consent Decree is entered into by and between and, hereinafter sometimes referred to as "plaintiffs," and, hereinafter sometimes referred to as "defendant," on the date last executed below.

WHEREAS: The defendant's property is a hotel known as Quality Hotel & Suites at the Falls and is located at 240 Rainbow Boulevard, Niagara Falls, New York 14303. Defendant has represented that there have been delays in making the modifications to the property as provided for pursuant to the original Consent Decree. Accordingly, in consideration for resolving all matters in dispute, the parties have agreed to the following terms and conditions subject to the Court entry of an Order Approving and Entering the Modified Consent Decree.

1. All alterations, modifications, and policies required by this Modified Consent Decree shall be completed by June 21, 2011. After June 21, 2011, to ensure that the modifications to the subject property required below have been completed, defendant shall provide a written report to plaintiffs' counsel to verify commencement, progress and completion of the work required hereby. The parties have agreed that this written report will be prepared by expert, James A. DiLuigi of Access-Ability Consultants, Inc.
2. Defendant shall pay plaintiffs' counsel, Fuller, Fuller & Associates, P.A., for plaintiffs' attorneys' fees, litigation expenses and costs incurred in the modification of the original Consent Decree. Said amount shall be \$9,000.00 and shall be payable by check to Fuller, Fuller & Associates, P.A. by February 4, 2010.
3. When all issues are resolved between the parties, the parties hereby agree and will request the Court to approve and enter the Modified Consent Decree, providing for retention of jurisdiction by the Court to enforce, as necessary, the terms of this Decree.

4. The parties warrant that all the provisions of this Modified Consent Decree will remain in strict confidence, except where disclosure is required under appropriate legal process or is necessary to resolve the issue of attorneys' fees and/or costs. The parties agree to refrain from making any statements about the lawsuit, the allegations contained herein, or this Modified Consent Decree except that the defendant may share this Modified Consent Decree with any prospective purchasers and with any parties engaged to perform the barrier removal obligations herein.
5. This Modified Consent Decree shall be binding upon and inure to the benefit of the parties hereto and their respective successor and/or assigns. The parties shall perform their obligations under this Modified Consent Decree in good faith.
6. The parties agree and acknowledge that the defendant may implement alternative actions that would provide equivalent facilitation to those actions specified in Exhibit A - Settlement Actions, as long as defendant timely informs plaintiffs in writing, through counsel, of the alternative actions being taken.
7. The parties agree that any delays in making the modifications to the property as provided for pursuant to this Modified Consent Decree caused by third parties, including but not limited to construction contractors, or city building officials, inspectors, or permitting departments, will not be deemed to violate the compliance dates herein as long as the defendant makes a good faith effort to effect implementation as soon as reasonably possible thereafter.
8. Upon the Court's approval of this Modified Consent Decree and upon the defendant's full compliance with the terms and conditions of this Modified Consent Decree, plaintiffs hereby release and discharge defendant, its officers, employees, agents, successors and assigns from any and all claims and causes of action related to the property at issue in this action which they have had arising under the Americans With Disabilities Act.
9. The parties acknowledge that the modifications described in this Modified Consent Decree shall be implemented according to the standards set out in 28 CFR Part 36 §36.304(d)(7-1-94 edition). All references to figures in the paragraphs below refer to those that accompany the ADA-SAD.
10. This Modified Consent Decree can be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. A facsimile copy of any parties signature shall be deemed as legally binding as the original signatures.
11. The defendant is advised that under certain circumstances a tax credit and/or tax deduction may be available to businesses to help cover the cost of making access improvements. (See Sections 44 and 190 of the Internal Revenue Code).

12. Defendant agrees that it shall perform the corrective actions that are identified as part of Exhibit A - Settlement Actions by the completion date set forth in Paragraph 1 of this Modified Consent Decree.

IN WITNESS WHEREOF, the parties hereto execute this Modified Consent Decree regarding ADA compliance for Disabled Patriots of America, Inc., a Florida Non Profit Corporation, and Marcus Ingram, Individually vs. NF Hotel, LLC, a New York Limited Liability Company, Case No.: 1:07-cv-00299-JTC to be effective on the date upon which the last signatories execute this Modified Consent Decree.

PLAINTIFFS:

By: _____ Date: _____
Disabled Patriots of America, Inc.

By: _____ Date: _____
Marcus Ingram

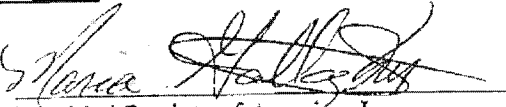
DEFENDANT:

By: Joseph M. Anderson Date: 1/27/10
NF Hotel, LLC


12. Defendant agrees that it shall perform the corrective actions that are identified as part of Exhibit A - Settlement Actions by the completion date set forth in Paragraph 1 of this Modified Consent Decree.

IN WITNESS WHEREOF, the parties hereto execute this Modified Consent Decree regarding ADA compliance for Disabled Patriots of America, Inc., a Florida Non Profit Corporation, and Marcus Ingram, Individually vs. NF Hotel, LLC, a New York Limited Liability Company, Case No.: 1:07-cv-00299-JTC to be effective on the date upon which the last signatories execute this Modified Consent Decree.

PLAINTIFFS:

By: 
Disabled Patriots of America, Inc.

Date: Jan 27, 2010

By: 
Marcus Ingram

Date: 2/1/2010

DEFENDANT:

By: _____
NF Hotel, LLC

Date: _____

So Ordered
John T. Cantu
2/3/10

NE Hotel, LLC
Exhibit A - Settlement Actions

Settlement Item	Location	Element	Feature/Finding	Article/Cause(s)	ADA/SAO (ADAAG)
A	Item Street Parking	Secondary Parking Lot	Lot is remote from an entry, is mostly edged in areas of 1% and contains 22 parking spaces, none of which are accessible. Two spaces at the Rainbow Boulevard edge of the lot are adjacent to the sidewalk and nearly level.	When the two spaces at the Rainbow Boulevard edge to create 2 van accessible spaces with an access aisle between and a walkway from the hotel connecting to the street sidewalk.	4.6
B	Rainbow Boulevard Parking	Primary Parking Lot	Lot is adjacent to an entry and contains 30 designated parking spaces, including 3 accessible spaces across from the entry doors. The accessible parking spaces do not have access aisles.	Reserve the existing three accessible spaces to provide 2 van use parking spaces with an access aisle between them.	4.6
C	Rainbow Boulevard Parking	Primary Parking Lot	Parking space signs are low and visually obstructed by parked vehicles.	Rules the two signs to 60 inches minimum to bottom.	4.6.4
D	Rainbow Boulevard Parking	Street Parking	2 accessible parking spaces on the street near the hotel entry.	Train white parking staff to advise guests with disabilities regarding these spaces should the accessible four spaces be full and to offer assistance in accessing the car stacks.	70.202
E	Rainbow Boulevard - Hotel Entry	Entry Doors	Interior vestibule doors have 10-25 lbs force with 3 rd second closing speed. No threshold.	Adjust door closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
F	Rainbow Boulevard - Hotel Entry	Entry Doors	Exterior vestibule doors have 10-25 lbs force with 3 seconds closing speed. Threshold is accessible.	Adjust door closer to as close as reasonably possible to 8 lbs max force with 3 seconds minimum closing speed.	4.13.10
G	First Street Hotel Entry	Walkway Approach from Bus/Tram Drop-Off/Valet Parking	Slope down to entry is 7.2% at top 8 feet adjacent to sidewalk, rest 11 feet slope is 11% to a 3 foot deep level landing area which sunk about 2 inches.	Modify the entry area to reduce slope to a 3% maximum. Entry could be moved back about 3-6 feet to reduce slope by eliminating the outer portion. Add handrail at each side.	4.3
H	First Street Hotel Entry	Walkway Approach from Bus/Tram Drop-Off/Valet Parking	Outer approach without doors has a 3 inch vertical lip offset at threshold. A tapered board was installed.	Eliminate the board and vertical offset. (See Settlement Item G)	-
I	Lobby Level Large Meeting Room	Entry Doors	2 pairs of 36 inch wide doors with push-pull hardware. Closer has 12 lbs force with 1 second closing speed.	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
J	Men's Restroom at Large Lobby Meeting Room	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage and signage indicating the location of the adjacent valet accessible restroom. (See Settlement Item L)	4.30
K	Women's Restroom at Large Lobby Meeting Room	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage and signage indicating the location of the adjacent valet accessible restroom. (See Settlement Item L)	4.30
L	Restroom Area at Large Lobby Meeting Room	Curtain Room	Used for storage.	Change the room to a women restroom and provide an accessible route from the lobby.	4.1.5 (D) (e)
M	Lobby/Restaurant Men's Restroom	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage.	4.30
N	Lobby/Restaurant Men's Restroom	Entry Door	Signage is on the door face and not tactile.	Add ISA signage indicating the location of an accessible women restroom with a side transfer water closet in the meeting room area. (See Settlement Item L)	4.1.6 (D) (e)
O	Lobby/Restaurant Men's Restroom	Entry Door	Closer requires 11 lbs with 3 rd second closing speed.	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11
P	Lobby/Restaurant Men's Restroom	Lavatory	Knee clearance up accessible. Counter top is 31 inches high.	Modify the lavatory to be 34 inches high maximum, with accessible lavatory clearance and installed paper.	4.19
Q	Lobby/Restaurant Men's Restroom	Lavatory	Water Closet (WC)	Provide a mirror with bottom reflective edge at 40 inches high maximum.	4.19
R	Lobby/Restaurant Men's Restroom	Water Closet (WC)	One ambulatory type stall, 39 1/2 inches wide.	Add a grab to the outside face of the stall door.	4.17.5
S	Lobby/Restaurant Men's Restroom	Adorn	No visual alarm.	At the time of the next alarm system upgrade, add a visual alarm.	4.1.3 (14)
T	Lobby/Restaurant Women's Restroom	Entry Door	Signage is on the door face and not tactile.	Add tactile room name signage.	4.30
U	Lobby/Restaurant Women's Restroom	Entry Door	Signage is on the door face and not tactile.	Add ISA signage indicating the location of an accessible women restroom with a side transfer water closet in the meeting room area. (See Settlement Item L)	4.1.6 (D) (e)
V	Lobby/Restaurant Women's Restroom	Entry Door	Signage is on the door face and not tactile.	Adjust closer to as close as reasonably possible to 5 lbs max force with 3 seconds minimum closing speed.	4.13.10 4.13.11

System/Item	Location	Elevator	Feature/Findings	Action/Comment	ADA-504 (ADAAG)
W	Lobby/Restaurant Women's Restroom	Lavatory	21-1/2 inch high top	Modify the lavatory to be 34 inches high maximum, with accessible lavatory clearance and installed paper towels.	419
X	Lobby/Restaurant Women's Restroom	Lavatory	34 inch high mirror	Provide a mirror with bottom reflective edge at 40 inches high maximum.	419
Y	Lobby/Restaurant Women's Restroom	Water Closet Stalls (7)	1 wheelchair type 36-1/2 inch wide	Reduce dispenser away from grab bar 12 inches minimum above or 1 1/2 inches minimum below.	426
Z	Lobby/Restaurant Women's Restroom	Water Closet Stalls (7)	1 wheelchair type 36-1/2 inch wide	Add a grab bar to outside of the outside stall door.	417.5
AA	Cigar Lounge Access from Lobby Elevator	Entry from Elevator Lobby	Storage rack inside	Add tactile room name signage.	413.1(b)(1)
AB	Restaurant	From Street Entry	Walkways from Fifth Street sidewalk slopes 3%.	Reconstruct the landing to provide a 5 foot deep level area and accessible threshold.	413.6
AC	Restaurant/Bar	Self-Service Unattended Buffet Area	Landing in doors is 36 inches high and 3 feet deep. Self service unit is 36 inches high. Circulation around it is accessible. Adjacent waiting tables for food presentation are 30 inches high.	Install 15A signage indicating table service is available on request.	36.303
AD	Restaurant/Bar	Outdoor Patio Off Breakfast Area	Pair of 16 inch doors. Check 12 by 2 sign. Sign concrete offset at exterior side.	Add wall-off rail at exterior side to provide a hand insertion in the threshold.	413.6
AE	Ramp to Wedding Chapel and	Handrail	Handrail is on one side only and 2 inches in diameter.	Add horizontal extension at the top of bottom.	426
AF	Ramp to Wedding Chapel and	Handrail	Handrail is on one side only and 2 inches in diameter.	Add a handrail on the other side.	426
AG	Wedding Chapel	Entry	Signage is on the door face and not tactile.	Provide room name tactile signage at the strike side of the door.	430
AH	Culinary Meeting Room	Entry Door	Signage is on the door face and not tactile.	Provide tactile signage at the strike side of the door.	430
AI	Culinary Meeting Room	Entry Door	Rounded knob door hardware.	Change to lever handle.	413.9
AJ	Culinary Meeting Room	House Phone	62 inch high to top buttons.	Lower to 48 inches to top buttons.	ADA/ABA-AG
AK	Culinary Meeting Room	House Phone	No volume control.	Provide a volume control handset.	431
AL	Stairs Adjacent to Front Desk for Access to Level 1 Guestrooms	Handrails	No elevator access to this level.	Provide horizontal handrail extensions at the top and bottom where walls exist.	426
AM	Level 1 Guestroom Corridor	Guest Laundry Room	This level is not accessible.	Provide horizontal handrail extensions at the top and bottom where walls exist.	417(1)
AN	Elevator	7 tactile floor indicators at Highway Entrance	Braille is not provided below floor numbers. Some numbers are missing.	Provide raised floor numbers with Braille below at all highway entrance elevator door lobbies.	410.3
AO	Elevator	Emergency Communications	Phone in cabinet.	Change to push-button device. If in a cabinet, provide accessible handle.	410.14
AP	Guestrooms	Accessible Guestrooms	The hotel has approximately 211 total guestrooms including 12 accessible guestrooms, all in-tub quality and all with tub.	The ADA advisory requires 10 accessible guestrooms for a hotel of this size, including 3 with a roll-in shower. Modify the existing accessible guestrooms and modify one suite to be accessible as noted below.	9.2
AQ	Existing Accessible Guestrooms	Entry Door	Push side clearance is 8 inches wide.	Install horizontal door opener with automatic back release and emergency power back-up.	12 Fig 25
AR	Existing Accessible Guestrooms	Closet	Shelf and hanger rods	Subside to provide 172 with a 48 inch high shelf and 100 below and 1/2 at standard height.	9.2.4(f)
AS	Existing Accessible Guestrooms	Entry Door	Security lock is 59 inches high.	Lower to 48 inches.	413.9
AT	Existing Accessible Guestrooms	Bath	Lavatory top is 32 inches high with 26 inch high knee clearance. Pipes are not insulated.	Insulate the pipes.	419.4
AU	Existing Accessible Guestrooms	Bath	Hot dryer	Lower to 48 inches high.	ADA/ABA-AG
AV	Existing Accessible Guestrooms	Bath	Water closet side wall grab bar	Reconstruct lavatory to extend to at least as far as practical to 54 inches from the rear wall.	Fig. 29
AW	Existing Accessible Guestrooms	Bath	100 Shower head	Modify to have a standard shower head plus a hand held shower head on a side bar with a diverter valve control within accessible reach range.	421.6
AX	Existing Accessible Guestrooms	Bath	11b	Modify 3 of the beds to have a roll-in shower.	9.1.2
AY	Guestroom 400 - 401	Configuration	There are no accessible paths.	Modify one suite to be accessible with 2 beds and a bath with a roll-in shower.	9.2